

INNOCENT OWNERS/LESSORS INSURANCE



Innocent owners insurance (IOI) protects the balance sheet of an owning company when asset(s) are under bareboat charter to another company. Lessors insurance provides a similar contingent protection to the innocent investor in a maritime venture.

WHO NEEDS AN IOI/LESSORS INSURANCE POLICY?

Any party with an equity investment in the project, but with no operational interest in the vessel/asset or responsibility for arranging or maintaining the insurances.

WHAT DOES AN IOI POLICY COVER?

A full IOI policy responds to the extent the bareboat, or demise charterer's insurers decline to pay an otherwise valid claim for any one of a number of reasons, for example:

- Non-disclosure or misrepresentation by the bareboat charterer/operator or any of their agents.
- Unseaworthiness.
- Deliberate sinking of the vessel.
- Breach of a policy condition or subjectivity.
- Non-compliance with international codes, for example, the International Safety Management (ISM) Code/classification.
- Time bar.

Marsh Maritime Advisory has bespoke wordings for all types of equity investors' exposures, designed to protect the specific exposure of an innocent entity.

WHAT IS NOT COVERED BY AN IOI POLICY?

- IOI is not a guarantee of the claims paying ability of the owner's insurers, that is, if the primary insurers are unable to honour their financial obligations, IOI will not respond.
- IOI is not a difference in conditions policy; if the primary policy did not cover the peril which caused the loss, IOI will not typically respond.

HOW MUCH DOES AN IOI POLICY PAY?

The policy will pay up to the sum insured; an amount that should accurately reflect the equity at risk and the potential balance sheet loss. This is typically the full value of the vessel less any amount financed (provided the amount financed is insured for mortgagee's interest insurance (MII) by the financier).

CAN A JOINT POLICY BE ARRANGED TO PROTECT BOTH INNOCENT OWNER AND MORTGAGEE?

Yes. Marsh Maritime Advisory can arrange a joint policy (MII/IOI) to protect both the mortgagee and innocent owner for their respective exposure. Should the finance be an amortising loan, whereby repayments are made by the borrower (owner), a policy can be arranged whereby the equity amount insured for the innocent owner increases automatically as the loan is repaid and the debt to the mortgagee reduces. This approach ensures that each party is insured for their respective interests at all times.

WHAT HAPPENS IF THE SETTLEMENT OFFER FALLS SHORT OF THE EXPOSURE?

If the charterer's insurers dispute the claim and offer a compromise settlement that falls short of the owner's/lessors' exposure they can submit a claim to the IOI policy for the shortfall.

WHAT HAPPENS IF THE INSURERS DISPUTE THE CAUSE OF LOSS?

If the different insurers on the charterer's policy accept that the vessel is lost but dispute the cause of loss (for example, is it a marine loss or is it war a loss), after the pre-agreed waiting period, an IOI claim can be submitted. Upon payment, IOI insurers will pursue the charterer's insurers for recovery.

WHAT HAPPENS IF THERE IS A DELAY IN SETTLEMENT?

If the charterer's insurers don't specifically decline the claim but constantly raise more and more supplementary questions (with the presumed ultimate intention of delaying/avoiding settlement), at a pre-agreed time, an IOI claim can be submitted to IOI insurers.

HOW DO RATES COMPARE TO MORTGAGEE'S INTEREST INSURANCE RATES?

While an innocent owner/equity investor does not hold the same primary creditor position enjoyed by a mortgagee, rates are usually identical.



WHAT AFFECTS IOI RATES?

There are two main influencing factors when considering IOI rates, these are:

- Charterer's/operator's insurers. As it is the non-payment by charterer's insurers that prompts a claim under an IOI policy, the quality of these insurers will influence the price of an IOI policy. Insurers will look at the credit rating of these insurers and contra indicators, such as the use of a captive for a large share of the risk.
- Identity of bareboat charterer/operator: The size, profile, and claims record of the charterer/operator, with larger companies with good loss records perceived as less likely to have claims rejected by their insurers (and therefore a reduced likelihood of a claim under an IOI policy).

DOES AN INNOCENT OWNER/LESSOR NEED TO INSURE AGAINST SEIZURE FOLLOWING A POLLUTION INCIDENT?

Yes. Equity investors have an insurable interest against seizure of the asset arising out of a pollution incident, and innocent owners additional perils (pollution) insurances (IOAPP) is designed to cover this risk.

DOES AN IOI POLICY PROVIDE SEPARATE LIABILITY PROTECTION FOR THE OWNER/LESSOR?

No. Both IOI and IOAPP are "only" designed to reimburse the equity investor for the loss of the asset, with the operational liability exposure protected by way of the protection and indemnity (P&I) policy (on which the innocent owner is named). However should the P&I not respond, alleging there has been a breach of policy condition or warranty, the innocent owner may find themselves defending their position as being a named insured on the primary policies and they may be pursued by a claimant. Insurances are available to provide cost of defence (liability) protection for the innocent owner/lessor in such an eventuality.



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